



# NEPA Delegation News

"A Publication of Caltrans Division of Environmental Analysis"

This fact sheet provides a look at the purpose and progress of a new federal pilot program that would allow the California Department of Transportation (Caltrans) to assume federal environmental responsibilities currently handled by the Federal Highway Administration (FHWA). The fact sheet also outlines the process leading to Caltrans' taking on these new responsibilities.

## Overview

In August 2005, President Bush signed into law the new federal transportation reauthorization bill called the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (**SAFETEA-LU**). One section of SAFETEA-LU named California as one of five states eligible to take part in a six-year pilot program. The pilot program will allow Caltrans to assume the FHWA's responsibilities under the National Environmental Policy Act (**NEPA**) and other federal environmental laws.

Assigning federal NEPA responsibilities to Caltrans is expected to simplify and expedite the environmental process for transportation projects—while ensuring the same level of protection for environmental resources. Participation in the pilot program will allow California to show its leadership in both transportation delivery and environmental protection. 🚧



## What is NEPA?

NEPA is a federal act that established a national environmental policy that promotes minimizing environmental impacts, stimulating human health and welfare, and enriching the understanding of ecological systems and natural resources. NEPA requirements are applied to federal projects that could impact the environment, such as highway projects. 🚧

## • ACRONYMS •

<b>Caltrans</b>	California Department of Transportation
<b>CEQA</b>	California Environmental Quality Act
<b>FHWA</b>	Federal Highway Administration
<b>MOU</b>	Memorandum of Understanding
<b>NEPA</b>	National Environmental Policy Act
<b>SAFETEA-LU</b>	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
<b>USDOT</b>	U.S. Department of Transportation

## The Current Process

FHWA, which provides federal funds for highway, street and road projects, currently ensures that projects comply with all federal laws, regulations, guidance and standards for state projects, and locally-sponsored projects on and off the State Highway System. FHWA also is responsible for consulting with other federal agencies, such as the Army Corps of Engineers and the U.S. Fish and Wildlife Service, under other federal environmental laws and regulations.

Caltrans prepares the environmental documents required under both NEPA and **CEQA** (California Environmental Quality Act) for projects on the State Highway System. Caltrans staff also prepares the technical documents necessary to comply with the other federal environmental laws, such as the Endangered Species Act and the National Historic Preservation Act. In addition, Caltrans provides informal consultation and staff support for FHWA's formal consultation with the federal agencies who have jurisdiction over those laws. Local agencies and their consultants

prepare the documents for locally-sponsored projects. Caltrans reviews local agency documents for compliance with federal standards before sending them to FHWA for approval.

FHWA reviews all Caltrans and locally-prepared environmental documents and technical documents. When necessary, documents are returned to these agencies for revision. FHWA is responsible for final approval of documents and other consultation agreements. 🚧

## NEPA Delegation Pilot Program

*A primary benefit of the NEPA Delegation is streamlined project delivery.*

The NEPA Delegation Pilot Program offers the opportunity to test a streamlined environmental process. Under the program, FHWA would assign to Caltrans some or all of its authority and responsibility for compliance with federal environmental laws. This would include approval of federal environmental documents for highway projects, such as Environmental Impact Statements, Environmental Assessments and Categorical Exclusions. Caltrans would, in essence, “become” the federal agency for those projects.

Caltrans has a choice in how much responsibility it takes, whether only a handful of high-priority projects or as much as the entire NEPA program. Caltrans intends to apply for the full range of involvement.

*Caltrans will meet all federal and state environmental requirements.*

**Strict Environmental Standards** — Under the pilot program, Caltrans would be required to comply with federal laws, regulations, guidance and policies issued by FHWA. The program would not change or weaken federal environmental protection standards. CEQA is similar to NEPA in its broad scope and required protections, and, because it is the lead agency on its own CEQA documents, Caltrans already has the structure in place to provide rigorous review under NEPA as well. Caltrans currently maintains high environmental standards and would continue to do so under the pilot program.

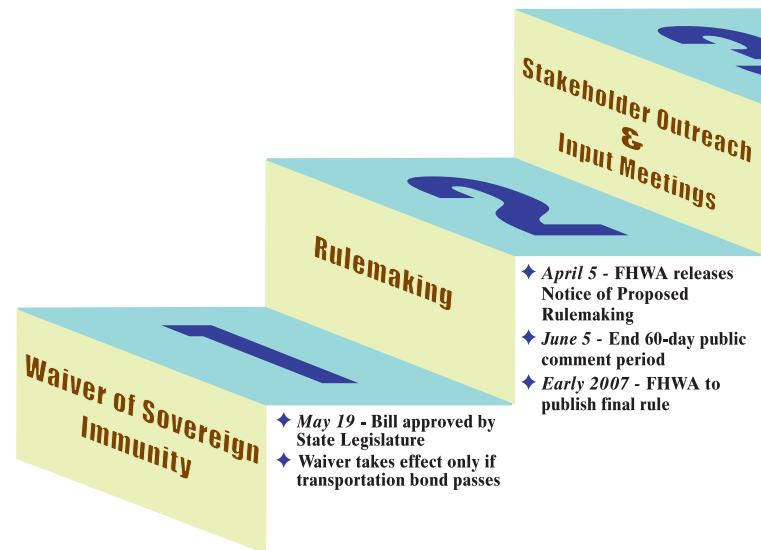
Assigning NEPA responsibilities to Caltrans will not replace its requirement to meet CEQA obligations. Both laws will be applied, interpreted and enforced as they are now. The only real change to the environmental process for highway projects would be eliminating FHWA review.



“Caltrans takes its environmental obligations seriously. We are firmly committed to effectively and responsibly undertaking the opportunities and obligations of the pilot.”

—Cindy Adams, Caltrans SAFETEA-LU NEPA Delegation Program Manager

## SAFETEA-LU Pilot Program NEPA Delegation Outreach



*The delegation process has several steps to ensure quality and legal compliance.*

**Application Process** — Caltrans must apply to participate in the pilot program, describe the scope of responsibility it would like assigned, and negotiate the terms with FHWA and the U.S. Department of Transportation (USDOT). The application is being developed based on draft rules from FHWA but will not be completed until FHWA issues final rules in early 2007. At that point, Caltrans will make its application available to the California public for review and comment for thirty days; all comments must be considered in the application. Caltrans will also gather input from resource agencies and environmental groups to ensure that environmental review is done fairly, effectively and efficiently under the pilot program. Once its application is accepted, Caltrans will enter into a formal Memorandum of Understanding with FHWA describing how the delegation program will be carried.

**Rigorous Compliance Oversight** — FHWA and USDOT will audit Caltrans twice a year for the first two years and once a year thereafter for the duration of the pilot program to make sure it meets federal environmental laws and regulations. A separate report will be sent by USDOT to Congress each year. The program may be cancelled if the state does not meet its responsibilities.

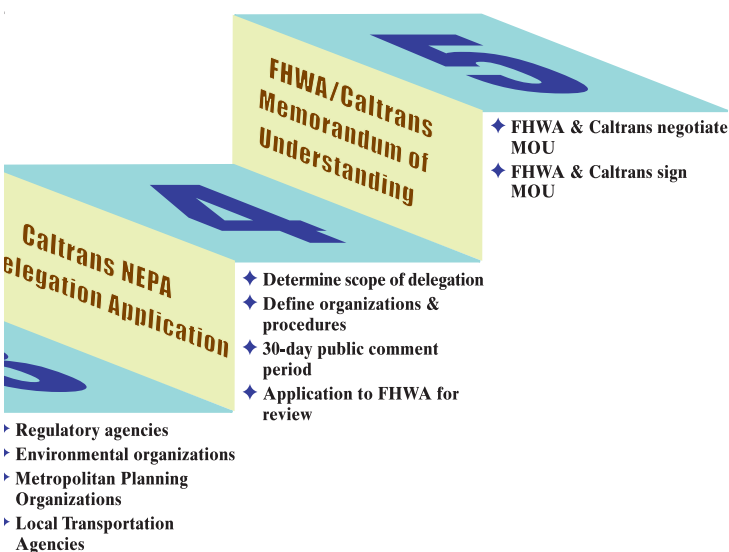
**Waiver of Sovereign Immunity** — To take part in the program, Caltrans must waive its 11th Amendment right to sovereign immunity against actions brought by citizens in federal court. California would assume sole legal responsibility and liability under federal law for its actions and decisions made during the pilot program. This waiver would not change the existing authority of federal agencies to sue the state in federal court to enforce environmental laws. The California state legislature passed Assembly Bill 1039 allowing Caltrans the necessary waiver, but only if the Transportation Bond passes in November. The legislation has a sunset clause limiting the term of the waiver—and therefore of the pilot program—to two years, which allows the legislature to check in on the program's cost effectiveness. It also requires Caltrans to report in January 2008 on the status of the program, including costs, time savings and any lawsuits. The legislature is likely to renew the waiver if Caltrans performs well in the initial two years of the pilot program. ⚠

## California's Track Record

California is well prepared to assume this role because California's state environmental law, CEQA, has similarities to NEPA as a broad "umbrella" law. As noted previously, Caltrans has implemented its own stringent environmental documentation process under CEQA for more than three decades. Also, Caltrans has successfully prepared NEPA and other federal environmental and technical documents on behalf of FHWA for more than 35 years. The pilot program would help streamline and expedite—but not change—this familiar process. In addition, Caltrans has been assigned the authority to act on behalf of FHWA before in specific programs, such as certain kinds of categorical exclusions and federal historic preservation consultations. Each time, processes were streamlined and project delivery times reduced while maintaining environmental protection. ⚠

## Stakeholder Outreach

A robust stakeholder outreach program is being conducted to provide information about NEPA Delegation and receive input on how to ensure its success. One-on-one stakeholder meetings have been held, and FHWA and Caltrans staff hosted a daylong workshop for resource agencies in March 2006. Outreach to environmental groups and nongovernmental organizations kicks off this summer. ⚠



**1 2 3 4 5**  
**STEPS**  
to Delegation



## What's Next...

FHWA issued a Notice of Proposed Rulemaking\* on the NEPA Delegation Program, which was open for public comment until June 5, 2006. FHWA will take those comments into account in developing the final rule, which is expected sometime in early 2007. When the final rulemaking is published, Caltrans will prepare its application, which will also be made available for 30-day public review. Caltrans will take these comments into account when finalizing the application for FHWA approval. The two agencies will also negotiate a Memorandum of Understanding (MOU) outlining the details of California's pilot program. When both the MOU and waiver of sovereign immunity are in place, Caltrans will formally assume its new federal role and responsibilities, and the NEPA Delegation Pilot Program will be officially launched in California. The diagram inside this fact sheet also illustrates these steps.

Over the next several months, Caltrans will meet with regulatory agencies and environmental groups to discuss the NEPA Delegation Pilot Program and hear their ideas on ensuring the program's success. Other outreach activities will be held to acquaint stakeholders with the program. Fact sheets like this will be issued as new information is available.



\*Federal Register, Volume 71, #65, Wednesday, April 5, 2006, 23 CFR Part 773, FHWA Docket # FHWA-05-22707.

## Where to Get Information

For further information about the NEPA Delegation Pilot Program or any other topics discussed in this fact sheet, please contact the individuals below.

### Caltrans

Cindy Adams  
SAFETEA-LU NEPA Delegation Program Manager  
California Department of Transportation  
Division of Environmental Analysis  
Mail Station 27, P.O. Box 942874  
Sacramento, CA 94274-0001  
Phone: 916-653-5157  
E-mail: cindy\_adams@dot.ca.gov

### FHWA

Maiser Khaled  
Director, Project Development and Environment  
Federal Highway Administration  
California Division  
650 Capitol Mall, Suite 4-100  
Sacramento, CA 95814-4708  
Phone: 916-498-5020  
E-mail: maier.khaled@fhwa.dot.gov



### Project Website

To get more information about SAFETEA-LU, the NEPA Delegation Pilot Program, Caltrans, opportunities for involvement, or to receive future fact sheets via e-mail, visit the project Website at the URL below.

[http://www.dot.ca.gov/hq/env/nepa\\_pilot/index.htm](http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm)

